

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SIMON PHILLIPS, #761660,

Plaintiff,

v.

CASE NO. 10-CV-11195

HON. GEORGE CARAM STEEH

VETERANS ADMINISTRATION
HOSPITAL,

Defendant.

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ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION (#22) AND GRANTING
DEFENDANT'S MOTION TO DISMISS (#16)

Plaintiff Simon Phillips filed a complaint, *pro se*, alleging employment discrimination. On December 3, 2010, defendant filed a motion to dismiss arguing: (1) plaintiff's complaint fails to state a claim upon which relief could be granted; (2) plaintiff failed to exhaust the EEOC's administrative remedies; and (3) plaintiff failed to name a proper party defendant. On June 28, 2011, Magistrate Judge Mark Randon issued a report and recommendation to grant defendant's motion to dismiss. Magistrate Judge Randon found plaintiff failed to state a claim as he failed to allege that he is a member of a protected class and that the "similarly situated employees" referenced in his complaint were in a non-protected category. Magistrate Judge Randon also found that plaintiff's complaint should be dismissed for failure to name the proper defendant as Erik K. Shinseki, Secretary of the Department of Veterans Affairs, is the proper named defendant for this case. On July 11, 2011, plaintiff filed a statement with his objections

to Magistrate Judge Randon's report and recommendation. In his statement, plaintiff alleges that he is an African-American but he does not allege that the "similarly situated employees" referenced in his complaint are in a non-protected category. He also fails to correct the named defendant error. The court finds Magistrate Judge Randon's report and recommendation is well-reasoned and the court adopts it in its entirety.

For the reasons stated above, the court hereby ACCEPTS and ADOPTS the magistrate judge's report and recommendation as its findings and conclusions in this matter. Defendant's motion to dismiss is GRANTED and plaintiff's complaint is DISMISSED.

SO ORDERED.

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: August 2, 2011

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on August 2, 2011, by electronic and/or ordinary mail and also to Simon Phillips, III, #761660 at St. Louis Correctional Facility, 8585 N. Croswell Road, St. Louis, MI 48880.

S/Josephine Chaffee
Secretary/Deputy Clerk